

## **Sandwell MBC**

### **Shared Parental Leave policy: for school-based employees: adoptive parents**

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#### Notes:

- References to “days” in this document means “calendar days”

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- Teachers not working in schools should substitute “service manager,” “line manager” or “head of service” wherever “headteacher appears in this document. Similarly, the word “school” should be replaced with “service” or “establishment”

## **What is Shared Parental Leave: Adoption?**

Shared Parental Leave: Adoption is a statutory entitlement that from 5<sup>th</sup> April 2015, enables adopters to choose how to share the care of their child during the first year following adoption. Its purpose is to give adoptive parents more flexibility in considering how to best care for, and bond with, their adopted child.

All eligible employees have a statutory right to take Shared Parental Leave. There may also be an entitlement to some Shared Parental Pay. This policy sets out the statutory rights and responsibilities of employees who wish to take statutory Shared Parental Leave (SPL) and statutory Shared Parental Pay (ShPP).

The Governing Body recognises that, from time to time, employees may have questions or concerns relating to their shared parental rights. A list of FAQ’s can be found on HR119.1. If you have any further queries please contact your HR Services provider. Further sources of information are listed at the end of this document.

## **Scope**

This document is applicable for all school-based employees and unattached/non-school-based teachers.

Employees who are birth parents should refer to documents in the HR118 series.

## **Who is eligible for Shared Parental Leave: Adoption?**

SPL: Adoption can only be taken by two employees who fall into one of two categories:

- A child’s adopter **and**
- the partner of the adopter.

An adopter is someone with whom the child is, or is expected to be, placed for adoption. Where two people have been matched jointly, the adopter for the purposes of the Shared Parental Leave scheme is the person who elected to take Statutory Adoption Leave. The person who, at the time of the placement, is married to, or is the civil partner or partner of the adopter may also be eligible for leave. A partner of an adopter is defined as a person who lives with the adopter and the child in an enduring family relationship but is not the adopter’s child, parent, grandchild, grandparent, sibling, aunt, uncle, niece or nephew.

There are a number of qualifying criteria that must be fulfilled for either adoptive parent to be able to take Shared Parental Leave.

## Eligibility of an adopter to SPL

For an adopter to be eligible for SPL, they must satisfy the following criteria:

- Have 26 weeks' continuous service with the same employer by the end of the week that the adopter is informed that they have been matched with the child (known as the **relevant** week) and have remained in continuous employment up to the week before any SPL is taken.
- Have, at the time of the child's placement, the main responsibility for the care of the child (i.e. apart from the adopter's partner)
- Be entitled to Statutory Adoption Leave.
- Have ended their entitlement to Statutory Adoption Leave by giving notice to curtailing their leave or by returning to work.
- Have a partner who satisfies the employment and earnings test and, at the time of the child's placement, has the main responsibility (apart from the adopter themselves) for caring for the child.

In addition, the adopter must also:

- provide a notice of entitlement and intention to take SPL eight weeks before the first period of leave to be taken,
- provide evidence, where requested in the form of one or more documents from the adoption agency of:
  - the name and address of the adoption agency,
  - the date the adopter was notified of being matched and
  - the date the agency expect to place the child with the adopter and
- provide the Headteacher with details of the adopter's partner's employer.

## Eligibility of an adopter's partner to SPL

For an employee who is an adopter's partner in order to be able to take SPL, they must satisfy the following criteria:

- Have worked for at least 26 weeks and earned an average of at least £30 (as of 2015) a week in any 13 weeks in the 66 weeks leading up to the baby's matching date,
- have remained in continuous employment up to the week before any SPL taken.
- Have, at the time of the child's placement, the main responsibility for the care of the child (i.e. apart from the adopter themselves).
- To have a partner who is entitled to Statutory Adoption Leave or Statutory Adoption Pay and who has curtailed their entitlement or returned to work.

In addition the adopter's partner must...

- provide a notice of entitlement and intention to take SPL eight weeks before their first period of leave.
- provide evidence in the form of one or more documents from the adoption agency of:
  - the name and address of the adoption agency,
  - the date the adopter was notified of being matched and
  - the date the agency expect to place the child with the adopter.
- provide the adopter's employer's details.
- have given a period of leave notice.
- satisfy the employment and earning test and at the time of the child's placement.

- have the main responsibility (apart from the adopter) for the care of the child.

### **The Shared Parental Leave entitlement**

This is generally 52 weeks less the amount of Statutory Adoption Leave the adopter has had or intends to take. The adopter must take two weeks' adoption leave (if eligible) before the start of a period of SPL. Therefore a maximum of 50 weeks' leave is available to be shared.

If he/she is not entitled to leave, he/she is not allowed to curtail their Statutory Adoption Pay until after the first two weeks of the adoption pay period.

An adopter may reduce their entitlement to adoption leave by returning to work before the full entitlement of 52 weeks has been taken, or they may give notice to curtail their adoption leave at a specified future date.

Where an adopter gives notice, from a future date, to curtail their adoption entitlement, then the adopter's partner can take Shared Parental Leave while the adopter is still using their adoption entitlements.

SPL will generally commence on the employee's chosen start date specified in their leave booking notice (i.e. for adopters on form HR119.2 or for partners on form HR119.3) or in any subsequent variation notice (i.e. on form HR119.4) (see "Booking Shared Parental Leave" and "Variations to arranged Shared Parental Leave" below).

If the employee is eligible to receive it, Shared Parental Pay may be paid for some, or all, of the SPL period.

### **When can Shared Parental leave be taken?**

The adopter must take two weeks' adoption leave before the start of a period of SPL. Shared Parental Leave can be taken by the secondary adopter from the day the child is placed for adoption with the adopter up to the day before the first anniversary of the placement. Leave must be taken in complete weeks, with a minimum of one week. It can be taken in one continuous period or in a number of discontinuous blocks.

Both parents can be on leave at the same time, e.g. an adopter could be on adoption leave and, if they have curtailed their adoption leave from a future date, the adopter's partner could be taking SPL, or they could both be on SPL.

(Ann, can we talk about this paragraph?)

### **Notifying the school of an entitlement to Shared Parental Leave**

If the notice is given before the child is placed for adoption, the start date of the leave must be expressed as either the day the child is placed or a certain number

of days following the placement. The end date must also be expressed as a certain number of days following the placement.

An employee entitled and intending to take SPL must give their Headteacher notification of their entitlement and intention to take to SPL, at least eight weeks before they can take any period of SPL.

### **Requesting further evidence of eligibility**

The Headteacher will, within 14 days of the SPL entitlement notification being given, request:

- Documentary evidence of the name and address of the adoption agency, the date on which they were notified of having been matched with the child and the date on which the agency expects to place the child for adoption.
- The name and business address of the partner's employer (where the employee's partner is no longer employed or is self-employed, their contact details must be given instead)

### **Fraudulent claims**

The employer can, where there is a suspicion that fraudulent information may have been provided or where the employer has been informed by the HMRC that a fraudulent claim was made, investigate the matter further in accordance with the usual investigation and disciplinary procedures.

### **Initial discussions regarding Shared Parental Leave**

An employee considering/taking SPL is encouraged to contact their Headteacher to arrange an informal discussion as early as possible regarding their potential entitlement, to talk about their plans and to enable the school to support the individual. Support from HR is available by contacting the schools HR services provider.

### **Formal notification**

Upon receiving a leave booking notice (i.e. form HR119.2 or HR119.3) the Headteacher will usually arrange a meeting to discuss it. Where a notice is for a single period of continuous leave, or where a request for discontinuous leave can without further discussion be approved in the terms stated in the employee's notice booking leave, a meeting may not be necessary. **A request for continuous period of leave cannot be refused by the employer.**

At the meeting the employee may, if they wish, be accompanied by a workplace colleague or recognised trade union representative.

The purpose of the meeting is to discuss in detail the leave proposed and what will happen while the employee is away from work. Where it is a request for discontinuous leave the discussion may also focus on how the leave proposal

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could be agreed, whether a modified arrangement would be agreeable to the employee and the Headteacher, and what the outcome may be if no agreement is reached.

### **Booking Shared Parental Leave**

In addition to notifying the Headteacher of entitlement to SPL/ShPP, an employee must also give notice to take the leave. Notice to take leave will be given at the same time as the notice of entitlement to SPL.

The employee has the right to submit three notifications specifying leave periods they are intending to take. Each one of the notifications may contain either:

- (a) a single unbroken block of weeks of leave (i.e. known as a “**continuous** period of leave”- for example, six weeks in a row)  
An employee has the right to take a continuous block of leave notified in a single notification, so long as it does not exceed the total number of weeks of SPL available to them (specified in the notice of entitlement) and the school has been given at least eight weeks’ notice.

OR

- (b) two or more weeks of “discontinuous” leave, where the employee intends to return to work between periods of leave.

A single notification may also contain a request for two or more periods of **discontinuous leave**, which means asking for a set number of weeks of leave over a period of time, with breaks between the leave where the employee returns to work (for example, an arrangement where an employee will take six weeks of SPL and work every other week for a period of three months).

Where there is concern over accommodating the notification, the Headteacher may seek to arrange a meeting to discuss the notification with a view to agreeing an arrangement that meets both the needs of the employee and the school (see “Initial discussions regarding Shared Parental Leave /Formal notifications” above).

For requests for discontinuous periods of leave, there is a two-week discussion period beginning with the date the employer received the notice during which the employer may consent to the leave, propose alternative dates, or refuse the leave. If agreement cannot be reached during this two weeks as to the timing of leave the employee can take the total amount of leave requested in the notice as a continuous period of leave. If the employee chooses to do this, they have five days from the end of this two-week period to specify a date from which they will take the continuous period of leave. This date must be after the 8 week notice period required. If the employee does not choose a date, the default position is that the leave will commence on the start date of the first period of leave requested.

The Headteacher will consider a notification for a discontinuous leave but has the right to refuse it. If the leave pattern is refused, the employee can either withdraw it within 15 days of giving it, or can take the leave in a single continuous block.

## **When can Shared Parental Leave be taken?**

SPL can only be taken in complete weeks, but may begin on any day of the week. For example, if a week of SPL began on a Tuesday it would finish on a Monday. Where an employee returns to work between periods of SPL the next period of SPL can start on any day of the week.

The employee must book SPL by giving the correct notification at least eight weeks before the date on which they wish to start the leave and (if applicable) receive ShPP.

## **Responding to a Shared Parental Leave notification within statutory timescales**

Once the Headteacher receives the SPL notification, it will be dealt with as soon as possible, but a response will be provided by no later than the 14<sup>th</sup> day after the request was made.

All requests for discontinuous leave will be given on form HR119.2 (for adopters) or on form HR119.3 (for the partners of adopters) and cannot be refused.

Requests for discontinuous leave will be carefully considered, weighing up the potential benefits to the employee and to the employer against any adverse impact to the council.

Each request for discontinuous leave will be considered on a case-by-case basis. Agreeing to one request will not set a precedent or create the right for another employee to be granted a similar pattern of SPL.

The employee will be informed in writing of the decision as soon as is reasonably practicable, but no later than the 14<sup>th</sup> day after the leave notification was made. The request may be granted in full or in part: for example, the Headteacher may propose a modified version of the request.

If a discontinuous leave pattern is refused then the employee may

- a) withdraw the request without detriment on or before the 15<sup>th</sup> day after the notification was given (Failure to withdraw notices in the time period means that employees “use-up” one of their maximum number of three possible notifications); or
- b) may combine the total number of weeks in the notice in a single continuous block. If the employee wants to take this action, they have until the 19<sup>th</sup> day from the date the original notification was given to inform the Headteacher when they want the leave period to begin. In this instance because notice to take a continuous block is being given the leave cannot be refused, but cannot start earlier than eight weeks after the original notification was given and sooner than the original start date requested. .If the employee does not choose a start date, then the leave will begin on the first leave date requested in the original notification.

## **Variations to amend an arranged period of Shared Parental Leave**

Arranged periods of Shared Parental Leave are not binding on the employee who is therefore permitted to vary or cancel an agreed and booked period of SPL, provided that he/she advises the Headteacher in writing at least eight weeks before the date of any variation. Any new start date cannot be sooner than eight weeks from the date of the request to vary the leave.

Any variation or cancellation notification made by the employee, including notice to return to work early, will usually count as a new notification reducing the employee's right to book/vary leave by one. (i.e. A request to vary will count towards one of the three notifications that an employee can make). However, a change as a result of a child being placed earlier than expected, or as a result of the Headteacher requesting it be changed, and the employee being agreeable to the change, will not count as further notification. Any variation will be confirmed in writing by the employer.

## **Statutory Shared Parental Pay (ShPP)**

Eligible employees may be entitled to take up to 37 weeks ShPP while taking SPL. The amount of weeks available will depend on the amount by which the adopter reduces their adoption pay period. .

In addition to meeting the eligibility requirements for SPL, an employee seeking to claim ShPP must further satisfy each of the following criteria:

- the adopter must be/have been entitled to Statutory Adoption Pay and must have reduced their adoption pay period ;
- the employee must intend to care for the child during the week in which ShPP is payable;
- the employee must have an average weekly earnings for the period of eight weeks leading up to and including the 15<sup>th</sup> week before the child's expected matching date and not less than the lower earnings limit in force for National Insurance contributions;
- the employee must remain in continuous employment until the first week of ShPP has begun;
- the employee must give proper notification in accordance with the rules set out below.

Where an employee is entitled to receive ShPP they must, at least eight weeks before receiving any ShPP, give their line manager written notice advising of their entitlement to ShPP. To avoid duplication, if possible, this should be included as part of the notice of entitlement to take SPL.

In addition to what must be included in the notice of entitlement to take SPL, any notice that advises of an entitlement for ShPP must include:

- the start and end dates of any adoption pay, ;
- the total number of ShPP weeks available, the amount of ShPP weeks the employee and their partner each intend to claim, and a non-binding indication of when the employee expects to claim ShPP;

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- a signed declaration from the employee confirming that the information they have given is correct, that they meet, or will meet, the criteria for ;ShPP and that they will immediately inform the council should they cease to be eligible.

It must be accompanied by a signed declaration from the employee's partner confirming:

- their agreement to the employee claiming ShPP and for the council to process any ShPP payments to the employee;
- that they will immediately inform their partner should they cease to satisfy the eligibility conditions.

Any ShPP due will be paid at a rate set by the Government for the relevant tax year.

The number of weeks during which an adopter or an adopter's partner can receive SHPP is 39 less the number of weeks' Statutory Adoption Pay the adopter has had or will have. As the adopter must take two weeks' adoption leave or not curtail their adoption pay period until after the first two weeks, there is a maximum of 37 weeks' ShPP available to be shared.

### **Terms and conditions during Shared Parental Leave**

During the period of SPL, the employee's contract of employment continues in force and they are entitled to receive all their contractual benefits, except for salary. In particular, any benefits in kind will continue and contractual annual leave entitlement will continue to accrue.

Pension contributions will continue to be made during any period when the employee is receiving ShPP but not during any period of unpaid SPL. Employee contributions will be based on actual pay. , Any unpaid periods of SPL may affect an employee's pension benefits.

### **Annual Leave**

SPL is granted in addition to an employee's normal annual holiday entitlement. Employees are reminded that holiday should wherever possible be taken in the year that it is earned. Where an SPL period overlaps two leave years the employee should consider how their annual leave entitlement can be used to ensure that it is not untaken at the end of the employee's holiday year.

### **Contact during Shared Parental Leave**

Before an employee's SPL begins, the employee's manager should discuss the arrangements for them to keep in touch during their leave. The Headteacher reserves the right in any event to maintain reasonable contact with the employee from time to time during their SPL. This may be to discuss the employee's plans to return to work, to ensure the individual is aware of any possible job opportunities, to discuss any special arrangements to be made or training to be

given to ease their return to work or simply to update them on developments at work during their absence.

### **Shared Parental Leave in Touch (SPLiT) days**

An employee can agree to or attend training for up to 20 days during SPL without bringing their period of SPL to an end or impacting on their right to claim ShPP for that week. These are known as "Shared Parental Leave in Touch" (SPLiT) days.

The Headteacher has no right to require the employee to carry out any work, and is under no obligation to offer the employee any work, during the employee's SPL. Any work undertaken is a matter for agreement between the Headteacher and the employee. Any SPLiT days worked do not extend the period of SPL.

An employee, with the agreement of the Headteacher, may use SPLiT days to work part of a week during SPL. The Headteacher and the employee may use SPLiT days to effect a gradual return to work by the employee towards the end of a long period of SPL or to trial a possible flexible working pattern.

SPLiT days may be taken in one block, or in single days.

For working a SPLiT day, employees will be paid their standard day's pay in line with the School Teachers Pay and conditions document (including any Teaching and Learning Responsibility payments). If the employee is receiving any ShPP during this time, the ShPP Pay will be increased to make up a standard day's pay.

Employees can claim payment for working on SPLiT Days on form HR605s.

### **Returning to work after Shared Parental Leave**

The employee will have been formally advised in writing by the employer of the end date of any period of SPL. The employee is expected to return on the next working day after this date, unless they notify the school otherwise. If they are unable to attend work due to sickness or injury, the school's normal arrangements for sickness absence will apply. In any other case, late return without prior authorisation will be treated as unauthorised absence.

If the employee wishes to return to work earlier than the expected return date, they may provide a written notice to vary the leave and must give the school at least eight weeks' notice of their date of early return. This will count as one of the employee's notifications. If they have already used their three notifications to book and/or vary leave then the Headteacher does not have to accept the notice to return early but may do if it is considered to be reasonably practicable to do so.

On returning to work after SPL, the adopter is entitled to return to the same job if their aggregate total Statutory Adoption Leave and SPL amounts to 26 weeks or less.

For adopter's this means the same job as the one they occupied immediately before commencing adoption leave and the most recent period of SPL, on the same terms and conditions of employment as if they had not been absent.

For partners of adopters this means the same job as the one they occupied immediately before commencing the most recent period of SPL, on the same terms and conditions of employment as if they had not been absent.

If their adoption leave and SPL amounts to 26 weeks or more in aggregate, the employee is entitled to return to the same job they held before commencing the last period of leave or, if this is not reasonably practicable, to another job which is both suitable and appropriate and on terms and conditions no less favourable.

The details of the Shared Parental Leave policy do not affect an employee's right to apply for Unpaid Parental Leave.

If the employee also takes a period of Unpaid Parental Leave of 4 weeks or less, this will have no effect on the employee's right to return and the employee will still be entitled to return to the same job as they occupied before taking the last period of leave if the aggregate weeks of adoption leave and SPL do not exceed 26 weeks.

If a parent takes a period of 5 weeks of Unpaid Parental Leave, even if the total aggregate weeks of adoption and SPL do not exceed 26 weeks, the employee will be entitled to return to the same job they held before commencing the last period of leave or, if this is not reasonably practicable, to another job which is suitable and appropriate and on terms and conditions no less favourable.

### **Further information**

Any queries or issues on Shared Parental Leave can be raised with the HR Service provider.

Acas.org.uk (provide hyperlink)

[www.cipd.co.uk](http://www.cipd.co.uk)

Unison	0121 569 5996
Unite	0121 569 6143
GMB	0121-569 5990